

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION**

CASE NO. 22-14349-CIV-CANNON/McCabe

JASPER CONTRACTORS, INC.

a/a/o Kevin Nguyen and Kristy Nguyen,

Plaintiff,

v.

**GEOVERA SPECIALTY
INSURANCE COMPANY,**

Defendant.

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**ORDER ACCEPTING REPORT AND RECOMMENDATION
WITH CLARIFICATION [ECF No. 32]**

THIS CAUSE comes before the Court upon the Magistrate Judge’s Report and Recommendation on Defendant’s Motion for Judgment on the Pleadings (the “Report”) [ECF No. 32]. On January 9, 2023, Defendant filed a Motion for Judgment on the Pleadings (the “Motion”) [ECF No. 16]. On February 24, 2023, following referral, Judge McCabe issued a Report recommending denial of the Motion [ECF No. 32 pp. 1, 8]. Both parties filed timely Objections to the Report [ECF Nos. 36, 37].¹

To challenge the findings and recommendations of a magistrate judge, a party must file specific written objections identifying the portions of the proposed findings and recommendation to which objection is made. *See* Fed. R. Civ. P. 72(b)(3); *Heath v. Jones*, 863 F.2d 815, 822 (11th Cir. 1989); *Macort v. Prem, Inc.*, 208 F. App’x 781, 784 (11th Cir. 2006). A district court reviews de novo those portions of the report to which objection is made and may accept, reject,

¹ Defendant filed an untimely Response to Plaintiff’s Objections [ECF No. 38], which the Court has nevertheless considered.

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or modify in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1). To the extent a party fails to object to parts of the magistrate judge's report, the Court may accept the recommendation so long as there is no clear error on the face of the record. *Macort*, 208 F. App'x at 784. Legal conclusions are reviewed de novo, even in the absence of an objection. *See LeCroy v. McNeil*, 397 F. App'x 554, 556 (11th Cir. 2010); *Cooper-Houston v. S. Ry. Co.*, 37 F.3d 603, 604 (11th Cir. 1994).

Upon *de novo* review, the Court finds Judge McCabe's Report to be well-reasoned and correct. In response to Plaintiff's request for clarification of Part B of the Report [ECF No. 37 pp. 2, 6–7], however, the Court hereby clarifies that Plaintiff is not barred by the Report or this Order from arguing, on summary judgment or at trial, that “Defendant waived its right to enforce certain policy conditions” by “denying coverage” [ECF No. 37 p. 1, 7]. Beyond that clarification, the Court has considered the parties' Objections and the full record [ECF Nos. 35, 36, 38] but finds no basis to reject or modify the Report. Accordingly, it is hereby

ORDERED AND ADJUDGED as follows:

1. The Report and Recommendation [ECF No. 32] is **ACCEPTED**.
2. The Motion [ECF No. 16] is **DENIED**.
3. Mediation in this case remains set for June 20, 2023, at 2:00 P.M. [ECF No. 23].

DONE AND ORDERED in Chambers at Fort Pierce, Florida this 27th day of March 2023.



AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

cc: counsel of record